THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
MISCELLANEOUS CAUSE NO.413 OF 2019

BOB BARUGAHARE---------- APPLICANT

VERSUS

1. **KAMPALA CAPITAL CITY AUTHORITY**
2. **ATTORNEY GENERAL---------- RESPONDENTS**

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

The Applicant filed an application for Judicial Review under Articles 42, 45 & 173 of the Constitution, Sections 33, 36 & 38 of the Judicature Act as amended, Rules 3, 4, 6, 7 and 8 of the Judicature (Judicial Review) Rules, 2009 for the following judicial review reliefs;

1.) A prerogative Order of Certiorari to quash the decision of Kampala Capital Authority interdicting the applicant from his job as Officer Registration Collection and Assessment with the 1st respondent be granted;

2.) An order that the applicant be reinstated in office of the 1st respondent and be paid all his outstanding salary arrears since August 2016, to date;

3.) An Order of prohibition issues restraining Kampala Capital Authority and the 2nd respondent and all their agents, servants, agencies, departments, authorities and officials from interfering with the applicant's execution of lawful orders, including the applicant on Police Bond with uncertainty and travelling outside Uganda without permission from the Responsible Officer.

4.) A declaration that the actions and decision of the 1st and 2nd Respondents of interdicting the Applicant from office, requiring him to keep reporting to Police on Police Bond since August, 2016 to date is unlawful, illegal, unreasonable and ultra vires associated with high handedness in abuse of office and power on the part of the 1st respondent.

5.) A declaration that the prolonged interdiction of the applicant and the continues reporting to Police on Police Bond without any just cause is illegal and abuse of applicant's right to a fair hearing and he is entitled to damages.

6.) An order for punitive and aggravated damages.

7.) The costs of this application be provided

The grounds in support of this application were stated in the Notice of Motion and repeated in the affidavits in support of the applicant-Bob Barugahare and briefly state that;

1) That applicant was appointed by the Public Service Commission as the appointing Authority and posted to work under the 1st respondent as the Officer Registration of Revenue Collection at Kampala Capital City Authority.

2) The 1st respondent on the 8th April 2013, offered an appointment following the notification of the appointment issued by Public Service Commission to the post of Officer Registration, Collection and Assessment on salary scale KCCA 7 receiving a monthly gross salary of 3,367,050/=.

3) That after serving the probation period to the satisfaction of the 1st respondent recommended the applicant to be confirmed by the Public Service Commission and the Applicant's appointment was on the 16th March 2015 confirmed by the Public Service Commission through a

communication written by the 1st respondent and signed by the Executive Director of the 1st respondent.

4) That on the 11th day of December 2015, the applicant was assigned more duties by the 1st respondent as Supervisor Prevention and Recovery.

5) That on the 28th July 2016 to date, the applicant was put on half pay by the 1st respondent restricted his movements outside the country with permission of the executive Director of the 1st respondent and has to report to Police bond to be extended which has caused him severe suffering and anguish for the last three years and more.

6) The applicant contends that this decision was erroneous in law and fact, ultra vires, unreasonable, illegal, unfair, an abuse of power and in breach of principles of fair hearing in that-

    i) The applicant has not had any prior disciplinary hearing instituted by the 1st respondent or court prosecution by the 2nd respondent for the three years.
    ii) The applicant enjoys the presumption of innocence and having his on interdiction of more than three years tantamount to the applicant serving an illegal punishment or sentence.
    iii) The applicant lived in fear and suffering the past three years awaiting the illegal interdiction to be lifted, but bto no avail.

The respondents opposed this application and they filed a affidavits in reply through Richard Lule- Director Administration and Human Resource at Kampala Capital City Authority.

(1) The applicant is staff of Kampala Capital City Authority, appointed as Officer Registration collect and Assessment in the Directorate of Revenue Collection.

(2) That in June 2016, the applicant committed several acts of fraud on the e-citie revenue management system of Kampala Capital City Authority by receiving payments from the general public and issuing forged receipts. This caused substantial revenue loss to the Respondent.

(3) The matter was investigated by the criminal investigations unit of the Respondent vide CRB 1233/2016 and later the case file was forwarded to the office of the Director of Public prosecutions for perusal and legal advice.

(4) The applicant was thereafter interdicted on the 28th July 2016 to pave way for investigations.

(5) That the Respondent accordingly informed the Public service commission about the interdiction of the applicant as required by the Public Service Standing Orders.

(6) That the investigations into the alleged fraud by the applicant continue, with the Directorate of Public Prosecutions yet to make a conclusive determination on the file. A reminder was sent to the Resident State Attorney City Hall on 31st January 2019 but to date the file has never been returned with guidance.

(7) That I have been informed by the Head Investigations KCCA, which information I verily believe to be true, that the police file is irretrievably lost by the Director of Public Prosecutions.

(8) That its upon conclusion of police investigations that the Respondent would be in a position to conclusively recommend to the Public Service Commission an appropriate course of action against the Applicant.

(9) That in any case, the Respondent can only lift the applicant's interdiction pursuant to a minute of the Public Service Commission. The commission is yet to communicate to the Respondent a decision on the matter.

(10) That the Public Service Commission through the Respondent contacted the Applicant to attend disciplinary proceedings at the Public Service Commission on Thursday 13th February 2020 and the Respondent is yet to be informed of the outcome of the disciplinary proceedings.

(11) That it is for the above stated reasons and in the interest of substantive justice and equity that this Honorable Court exercises its inherent power and discretion to dismiss the present application with costs for it lacks merit.

The 2nd respondent filed an affidavit through a State Attorney in the Attorney General's chambers-Ms Clare Kukunda briefly stating that;

1. The application is misconceived, frivolous, vexatious and an abuse of court process and does not merit the orders sought against the 2nd respondent.

2. That the application is incompetent and or incurably defective and that the application raises no cause of action against the 2nd respondent.

3. That the defendant denies all the paragraphs of the affidavit in support and the applicant shall be put to strict proof thereof.

At the hearing of this application the parties were directed to file written submissions which I have had the occasion of reading and consider in the determination of this application. I have found the submissions jumbled up since they have been made on issues not agreed upon in court.

Secondly, the applicant cited too many provisions which are not applicable or relevant. It does not serve any purpose to cite irrelevant provisions of law but rather it shows lack of preparedness and comprehension in presenting the

application. See ***Hon. Micheal Mabikke v Law Development Centre SCCiv App No. 14 of 2015***

Two issues were proposed for court's resolution;

1. ***Whether the interdiction of the applicant is lawful?***
2. ***What remedies are available?***

The applicant was represented by *Mr. Timothy Twikirize* whereas the 1st respondent was represented by *Ms. Tusiime Doreen* and the 2nd respondent was represented by *Mr. Natuhwera Johnson*.

Preliminary considerations

The affidavit in reply by the 2nd respondent is fatally defective since it does not make any meaningful response to the application. The deponent merely states "that they will put the applicant to strict proof". An affidavit contains evidence and is not a pleading in order to make such statements.

Secondly, the affidavit offends Order 19 rule 3 of the civil procedure rules in as far as it is not based on the deponent's knowledge and basically contains hearsay evidence.

Attorney General lawyers should desist from deposing on matters not within their knowledge since they are not professional witnesses for all government matters.

The affidavit is accordingly struck off with costs.

ISSUE ONE

Whether the interdiction of the applicant is lawful?

The applicant's counsel submitted that the actions and decision of 1st & 2nd respondents decision of interdicting the applicant from office without any disciplinary hearing, requiring him to keep reporting to police for bond since 2016 todate is unlawful, illegal, unreasonable, and ultra-vires associated with highhandedness in abuse of office and power on the part of the 1st respondent.

The applicant faults the respondents decision to interdict him from office without being charged and or convicted of any offence on the pretext that investigations were still on going by the 1st respondent.

The prolonged interdiction of the applicant and his continued reporting to police without just cause is illegal and blantant abuse of the applicant's right to a fair hearing

The respondents contended that the dismissal of the applicant was done in accordance with the law since the applicant had been convicted and sentenced. The act of dismissing the applicant was in compliance with the Court judgment an act of enforcement of a court Order.

The 1st Respondent did not in any way act *ultravires* as they did so legally by informing the relevant Service Commission and in the alternative, the 1st Respondent is not concerned with making any decision after it has interdicted the applicant but the said responsibility is envisaged by the appointing authority which is the Public service commission. In the premises therefore, the present application for judicial review discloses no plausible grounds against the 1st Respondent.

Determination

Public Service Standing Orders of Uganda (2010 Edition) under Regulation (f-s) 8 thereof; defines Interdiction as *"temporary removal of a public officer from exercising his or her duties while an investigation over a particular misconduct is being carried out"*

Further, it is provides as follows;

> "this shall be carried out by the Responsible Officer by observing that;-

(a) The charges against an officer are investigated expeditiously and concluded;
(b) Where an officer is interdicted, the responsible officer shall ensure that investigations are done expeditiously in any case within (three) 3 months

for cases that do not involve the police and courts and 6 months for cases that involve the police and courts of law"

The standing orders envisage an investigation after an interdiction which must be done expeditiously.

Interdiction requires an employee not to attend the work place either for investigative purposes or as a disciplinary sanction.

In **Fredrick Saundu Amolo v Principal Namanga Mixed Day Secondary School & 2 others** [2014] eKLR, the court had occasion to look into the interdiction question and the decision has been endorsed in many subsequent decisions. The following was held in that case: –

It is important to note that there can be preventive interdicts or punitive interdicts. On the one part being an interdict that is done in the context of allegations of misconduct prior to finding of guilt and the other interdict is implemented as a sanction after the finding of guilt.

A Punitive interdict can only issue in circumstances where the employment contract, the employer code of conduct, the Collective Bargaining Agreement or the law allows for it as a sanction…

Whether it is preventive or punitive, the interdict, suspension…to be valid must meet the requirements of substantive and procedural fairness. This is the position articulated in ***Chirwa versus Transnet and Others [2008] 2 BLLR 29, at the Constitutional Court of South Africa*** *and reiterated by this Court in* ***Industrial Petition No 150 of 2012, in the Matter of Joseph Mburu Kahiga et al versus KENATCO Co. Ltd et al.*** *This is so because, suspensions and interdictions are not administrative acts as the detrimental effect of it impacts on the employee's reputation, advancement, job security and fulfillment…*

There must be a **clear reason why the employee's interdiction is necessary**, independent of any contention relating to the seriousness of the misconduct… Thus a suspension or interdiction should only follow pending a disciplinary enquiry only in **exceptional circumstances,** where there is reasonable apprehension that the employee will interfere with any investigation that has been initiated, or repeat the misconduct in question. The purpose of such

removal from the workplace even temporarily, must be rational and reasonable and conveyed to the employee in sufficient detail to enable the employee to defend himself in a meaningful way…

Once these preliminaries are addressed, **then the employee must be heard on the merits of the case as a cardinal rule**. This is not to revisit the decision to suspend or interdict, the hearing is simply aimed at determining the allegations levelled against the employee and any defences that the employee may wish to make. Only then, after the close of the hearing or investigation is a sanction issued to the employee.

In the case of ***Oyaro John Owiny vs Kitgum Municipal Council*** *High Court Miscellaneous Application No. 8 of 2018*, Justice Stephen Mubiru stated that; the decision to interdict is not subject to the rules of natural justice. See also ***Cheborion Barishaki vs Attorney*** *General High Court Miscellaneous Application No. 851 of 2004*

The initial interdiction of the applicant was lawful since it was done in accordance with law.

The main contention is about the prolonged period of interdiction which has not been lifted for over three years.

The standing orders expect the responsible officer to carry out investigations and inquiries into the matter before a final decision is taken within given time limits of 3 months or 6 months. This would involve collecting information with a view to decide whether to a take further course of action to meet a given situation or to find correctives to a given problem. In case the investigations reveal any breach of law, prosecution of the concerned person may follow.

Bureaucratic inertia is proverbial. Administrative delay is a common malady in modern administrative process. A significant value which administrators must imbibe is that decisions must be taken within a reasonable time. Delay can cause a good deal of practical difficulties to the concerned person, and may even be regarded as amounting to a hidden form of arbitrariness.

Therefore to hold that inordinate delay like in the present case will invalidate an administrative action is one way of promoting administrative efficiency which will be for the public good. Where a statute does not prescribe any time-limit for the administration to take decisions, the courts have insisted that the decision maker ought not to delay its decision for an unduly long time. Delay in performance of statutory duties amounts to an abuse of process of law and has to be remedied by the court particularly when public interest suffers thereby.

There was no justification to have a delayed or protracted investigation for over three years unless it was actuated with the *malafide* intention of subjecting the applicant to harassment. Suspension/interdiction affects a government servant injuriously. In the case of ***O.P Gupta v Union of India [1987] 4 SCC 328*** court observed that;

> *"It is a clear principle of natural justice that the delinquent officer when placed under suspension is entitled to represent that departmental proceeding should be concluded with reasonable diligence and within a reasonable period of time. If such a principle were not recognised, it would imply that the Executive is being vested with a totally arbitrary and unfettered power of placing its officers under disability and distress for an indefinite duration"*

Disciplinary proceedings must be conducted soon after irregularities are discovered. It would be unfair to initiate such proceedings after a lapse of considerable time. If a delay is too long and is unexplained, the court may well interfere and quash the charges. But how long a delay is too long always depends upon the facts and circumstances of the given case. If such delay is likely to cause prejudice to the delinquent officer in defending himself, the inquiry/investigation has to be suspended.

However, whenever the plea of delay is raised, the court has to weigh the factors for and against such a plea and take a decision in totality of the circumstances. In other words, the court has to indulge in a process of 'balancing the boat' in the interest of both sides and fairness.

In the present case the respondents, are required under the Public Service Standing Orders to act within set time-limits of 3 months or 6 months. They ought not to have slept over the matter for more than 3 years. This was a long time in the circumstances of this case and the applicant has been harassed with the hanging charges or allegations that have not been expeditiously done or concluded within the set time-limits.

Any action taken outside the set time-limits is an act of illegality and should be deprecated. In absence of any justifiable reason for the delay, the action of the authorities (respondents) is undoubtedly unreasonable and arbitrary exercise of power.

The continued interdiction of the applicant beyond 6 months is illegal.

ISSUE TWO

What remedies are available to the parties?

The ever-widening scope given to judicial review by the courts has caused a shift in the traditional understanding of what the prerogative writs were designed for. For example, whereas *certiorari* was designed to quash a decision founded on excess of power, the courts may now refuse a remedy if to grant one would be detrimental to good administration, thus recognising greater or wider discretion than before or would affect innocent third parties.

The grant of judicial review remedies remains discretionary and it does not automatically follow that if there are grounds of review to question any decision or action or omission, then the court should issue any remedies available. The court may not grant any such remedies even where the applicant may have a strong case on the merits, so the courts would weigh various factors to determine whether they should lie in any particular case. See ***R vs Aston University Senate ex p Roffey [1969] 2 QB 558, R vs Secretary of State for Health ex p Furneaux [1994] 2 All ER 652***

The act of continuing to have to applicant on interdiction beyond the statutory period is illegal and is quashed.

The applicant is entitled to his full benefits and salary since July 2016 as by law established.

The application is allowed with to costs against the respondents.

I so order

Dated, signed and delivered be email and whatsApp at Kampala this 29th day of May 2020

SSEKAANA MUSA
JUDGE